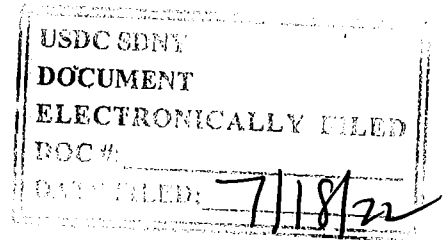


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
YONG BIAO JI,

Plaintiff,

v.

AILY FOOT RELAX STATION, INC. d/b/a  
Foot Relax Spa Station; LINDA FOOT  
RELAX SPA STATION, INC. d/b/a Foot  
Relax Spa Station; XIANG MAN ZHANG  
a/k/a AILING ZHANG; and KE XUE  
ZHENG,Defendants.  
-----X**ORDER**

19 CV 11881 (VB)

Briccetti, J.:

Plaintiff brings this wage-and-hour case against his former employers, defendants Aily Foot Relax Station Inc. and Linda Foot Relax Spa Station Inc., each doing business as Foot Relax Spa Station, and Xiang Man Zhang, also known as Ailing Zhang, and Ke Xue Zheng. Plaintiff was employed as a masseuse for defendants at their Yonkers, New York, and Parsippany, New Jersey, locations. Defendants are represented by Ning Ye, Esq., who works in Flushing, Queens, New York.

On July 11, 2022, defendants moved to change venue pursuant to 28 U.S.C. § 1404. (Doc. #133). Specifically, defendants seek to transfer this action within the Southern District of New York from the White Plains courthouse to the Manhattan courthouse.

For the following reasons, defendants' motion is DENIED.

First, this motion is improper under Section 1404(a). Section 1404(a) provides that "a district court may transfer any civil action to any other district or division where it might have been brought or . . . to which all parties have consented." 28 U.S.C. § 1404(a) (emphasis added). There is only one division in this District, and both the White Plains and Manhattan courthouses are located within it. See 28 U.S.C. § 112(b). Even if Section 1404(a) provided for a transfer

among courthouses within the same division, this action could not have been assigned to the Manhattan courthouse under Rule 18(a) of the Rules for the Division of Business Among District Judges, Southern District of New York.<sup>1</sup> Therefore, any request to change venue pursuant to Section 1404(a) must be denied.

For the same reasons, any request to change venue pursuant to Section 1404(b) must be denied, as that section provides for transfers “from the division in which [the case is] pending to any other division in the same district.” 28 U.S.C. § 1404(b) (emphasis added).

Second, defendants have not established that considerations of convenience and fairness support a transfer to the Manhattan courthouse pursuant to Section 1404(c). Section 1404(c) provides that “[a] district court may order any civil action to be tried at any place within the division in which it is pending.” 28 U.S.C. § 1404(c). The factors courts in this Circuit consider when determining whether to transfer a case under Section 1404(c) are:

(1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of the parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, and (7) the relative means of the parties.

Lehrer v. J&M Monitoring, Inc., 2022 WL 2392441, at \*10 (S.D.N.Y. July 1, 2022). Of these factors, “[p]laintiff’s choice of forum is presumptively entitled to substantial deference.” Id. (quoting Gross v. British Broad. Corp., 386 F.3d 224, 230 (2d Cir. 2004)).

Although defendants argue that “[b]oth Plaintiffs and Defendants . . . and super majority of the witnesses . . . were living, residing, working and/or situated Queens County” (Doc. #133 ¶ 1), the defendants are located in Yonkers, New York, and Parsippany, New Jersey; they do not

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<sup>1</sup> Although Rule 18 has been amended since plaintiff commenced this action, this case could not have been assigned to the White Plains courthouse under Rule 18(a) as the rule existed at that time, the relevant language of which has not changed.

identify any witnesses located in Queens County. (Doc. #2). Indeed, the only potential witness residing in Queens County of which the Court is aware is plaintiff, who opposes a transfer out of the White Plains courthouse. (See Doc. #135).

Defendants also argue for change of venue based on convenience to Mr. Ye, but convenience of counsel is not a relevant factor.

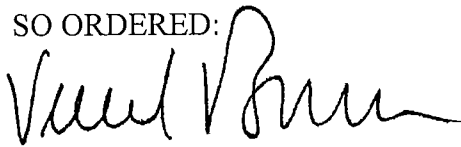
Moreover, because this is a Fair Labor Standards Act case for failure to pay minimum wages and overtime, the locus of operative facts and the location of a significant portion of the evidence will be where plaintiff was employed—in this case, in Yonkers and New Jersey. Defendants are incorrect that it is significantly more expensive or difficult for any party or witness located in Queens County to reach the White Plains courthouse as opposed to the Manhattan courthouse. Therefore, considerations of convenience and fairness weigh against transferring the case to the Manhattan courthouse pursuant to Section 1404(c).

For all of the foregoing reasons, defendants' motion is DENIED.

The Clerk is instructed to terminate the motion. (Doc. #133).

Dated: July 18, 2022  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', written over a horizontal line.

Vincent L. Briccetti  
United States District Judge